

07 April 2025

ICO Case Reference IC-369673-G8F7

Request for information

Request received 13 March 2025:

"Please provide the date South Yorkshire Police (SYP) notified the ICO about the data loss and the date the ICO investigation began. I can't see why the press office can't provide such basic information that doesn't relate to actual content of any investigation but in the absence of a response I seemingly have to ask under FOI.

I would like the correspondence between SYP and the ICO relating to the notification and start of the investigation with the understanding any detail relating to the content of the actual investigation can be redacted;

Please provide correspondence between SYP and the ICO relating to any measures SYP has taken to change/improve its IT and/or record keeping systems to ensure such loss doesn't happen in future. I am not seeking any information into an investigation into what happened as that appears to be ongoing but I do think any proposed changes/measures would be in the public interest to a significant degree given the amount and nature of the data loss;

Please provide any correspondence relating to any requirement to inform individual regarding the loss of personal data. As stated in my email to the press office I was seeking clarification as to whether this kind of loss does invoke any actions around personal data (and if this kind of footage does constitute personal data) but in the absence of any response again I seemingly have to ask under FOI."

Your request has been handled under the Freedom of Information Act 2000 (the FOIA). This legislation provides public access to recorded information held by a public authority unless an appropriate exemption applies.

Our response (paragraphs one and two)

We will first address paragraphs one and two of your request. We can confirm that we do hold information in relation to

“the date South Yorkshire Police (SYP) notified the ICO about the data loss and the date the ICO investigation began”

and

“the correspondence between SYP and the ICO relating to the notification and start of the investigation”.

However, we are withholding this information as it is exempt from disclosure under section 31(1)(g) of the FOIA. We can rely on section 31(1)(g) of the FOIA where disclosure:

“would, or would be likely to, prejudice... the exercise by any public authority of its functions for any of the purposes specified in subsection (2).”

In this case the relevant purposes contained in subsection 31(2) are 31(2)(a) and 31(2)(c) which state:

“(a) the purpose of ascertaining whether any person has failed to comply with the law...”

“(c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise ...”

Our enquiries into the incident described are ongoing. To release the information you have requested could prejudice the ICO's ability to conduct our investigations in an appropriate manner. Disclosure at this stage would discourage ongoing discussions between the ICO and SYP and may damage our ability to conduct and conclude the investigation fairly and proportionately.

Disclosure could also jeopardise the ICO's ability to obtain information relating to this case or others in future. It may result in other parties being reluctant to engage with the ICO. Also, any information released at this stage could be misinterpreted, which in turn could distract from the investigation process.

With this in mind, we have considered the public interest test for and against disclosure.

In this case the public interest factors in disclosing the information are:

- increased transparency in the way in which organisations respond to the ICO's enquiries;
- increased transparency in the way in which the ICO conducts its investigations; and
- the understandable public interest in this matter.

The public interest factors in withholding the information are:

- in maintaining organisations' trust and confidence that their replies to the ICO's enquiries will be afforded an appropriate level of confidentiality;
- in organisations being open and honest in their correspondence with the ICO without fear that their comments will be made public prematurely or, as appropriate, at all; and
- in maintaining the ICO's ability to conduct investigations as it thinks fit.

Having considered these factors, we are satisfied that it is appropriate to withhold the information.

Our response (paragraphs three and four)

We will now address paragraphs three and four of the request. We neither confirm nor deny (NCND) that we hold information:

"relating to any measures SYP has taken to change/improve its IT and/or record keeping systems to ensure such loss doesn't happen in future"

and

"relating to any requirement to inform individual regarding the loss of personal data."

Again, we can rely on section 31(1)(g) of the FOIA as quoted above. If held, the information you have requested would fall into the purposes contained in subsection 31(2)(a) and 31(2)(c).

Section 31(3) of the FOIA states that:

"The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1)."

We find that confirming or denying that we hold correspondence with the data controller on specific topics would itself reveal information about our engagement with them and any actions taken.

Section 31 is not an absolute exemption, and the duty to confirm or deny that we hold the requested information depends on the balance of the public interest. We consider that the public interest supports the use of the provision at section 31(3) in this instance.

We acknowledge that there is public interest in transparency around the way in which organisations respond to the ICO's enquiries, and in the way in which the ICO conducts its investigations. We also acknowledge the understandable public interest in this specific incident.

However, confirming or denying that we hold correspondence with SYP on specific subjects would be to confirm the nature of our discussions with the data controller thus far.

The ICO depends on free and frank engagement with data controllers in order to conduct efficient investigations. Revealing what we have or have not raised with a data controller, or what actions have or have not been taken whilst enquiries are ongoing, could discourage further discussions with them. This could damage our ability to conduct and conclude the investigation fairly and proportionately.

It is our view that the public interest favours an NCND response to maintain the effectiveness of the ICO to investigate this incident and others.

To confirm or deny the nature of our engagement with SYP at this stage could also set a precedent. It could prompt further FOI requests about the content of our correspondence with SYP, thus creating a more detailed picture of our investigations and the content of our correspondence with SYP through the mosaic effect.

It is in the public interest to adopt a consistent approach to our responses to such requests. Any inconsistency could lead to inferences being made about that response, and could lead to conclusions being drawn about other NCND responses. Used inconsistently, NCND responses could enable somebody to deduce whether information was held or not held in relation to other requests. Such deduction could itself prejudice our work.

It is therefore our view that, irrespective of the specific public interest in transparency in any individual case, the importance of maintaining the integrity of NCND responses is of the greater public interest.

For the avoidance of doubt, nothing in the above should be taken as confirmation or denial that the ICO holds correspondence with SYP on the matters specified in the request.

This concludes our response.

Next steps

You can ask us to review our response. Please let us know in writing within 40 working days if you want us to carry out a review. You can read a copy of our full [review procedure](#) on our website.

If we perform a review but you remain dissatisfied, you can [raise a complaint](#) to the ICO as regulator of the Freedom of Information Act. This complaint will be handled just like a complaint made to the ICO about any other public authority.

Your information

Our [privacy notice](#) explains what we do with the personal data you provide to us, and sets out [your rights](#). Our [Retention and Disposal Policy](#) details how long we keep information.

Yours sincerely

Information Access Team

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF

Telephone: 0303 123 1113. Website: ico.org.uk

For information about what we do with personal data, please see our [privacy notice](#)